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DEVELOPMENT OF WORKMEN'S COMPENSATION LEGISLATION.

BY F. C. SCHWEDTMAN, VICE-PRESIDENT, NATIONAL ASSOCIATION OF MANUFACTURERS AND MEMBER OF MISSOURI WORKMEN'S COMPENSATION COMMISSION.

It is gratifying to note how, one by one, important organizations or investigating bodies endorse principles of Workmen's Compensation Legislation recommended by the National Association of Manufacturers years ago, after careful research at home and in foreign countries.

The last organization of special importance to place itself on record for *Compulsory* Legislation is the American Bar Association.

The following parallel exposition of the principles enunciated by the American Bar Association's Committee indicates how nearly its principles are in line with those of the National Association of Manufacturers.

WORKMEN'S COMPENSATION LEGISLATION PRINCIPLES.

Taken from the American Bar Association's Special Committee's Report, August, 1912.	Taken from the National Association of Manufacturers' Special Committee's Report, May, 1911.
Uniform Laws for Compensation for Industrial Accidents should be enacted by all the States and by the United States within its jurisdiction.	All legislation must be for Compensation to prevent unfair competition between employers in different localities, it is necessary that Compensation Laws of the various States are reasonably uniform.
Laws should be **Compulsory** and exclusive of other remedies for injuries sustained in course of industrial employment.	Since the progressive individual usually provides voluntarily for reasonable Accident Compensation, it is right that the reactionary or selfish individual be compelled to do likewise through universal **Compulsory** Insurance. Single liability is essential for reasons of efficiency and equity.
Laws should apply to all Industrial operations or at least to all industrial organizations above a certain limit of size.	Compensation Legislation must cover every wage worker. The man who, without his fault, loses his hand in a farm machine, is as much entitled to compensation as the engineer who loses his hand in an engine gear.
Laws should apply to all accidents occurring in the course of industrial operations regardless of the fault of any one, self-inflicted injuries not being counted as accidents.	Every injury except those due to criminal carelessness or drunkenness on the part of the worker should be compensated.
The compensation should be adjudicated by a prompt, simple and inexpensive procedure.	Administration, solicitation and litigation expenses must be reduced to a minimum, and arbitration courts or a simplified court procedure are required for settlement of disputes.
The compensation should be paid in regular installments continuing during the disability, or in case of death, during dependent period of beneficiaries.	Compensation should be paid to injured workers, or their dependents, in the form of pensions and not lump sums.
The compensation should be properly proportioned to the wages received before injury.	Compensation must be assured. This can only be accomplished through insurance, approved by the State or National Government. Every safe method of such approved insurance should be permitted.
The compensation should be paid with as near absolute certainty as possible, in the most convenient manner, and there should be adequate security for deferred payments.	Employer and employee are jointly responsible for all unpreventable accidents, and should, therefore, jointly meet the compensation expenditures.
Your Committee is of the opinion that a very important branch of the subject referred to is the prevention of industrial accidents, and that every effort should be made to procure the adoption of uniform laws for the proper safeguarding of industrial employees from accident, and that this element should aways be considered in connection with any scheme for compensation for industrial accidents.	Humanity and efficiency demand that prevention of accidents is made of prime importance. Therefore, an efficient official inspection and statistical system which increases or decreases insurance rates in proportion to the accident prevention activities of each individual establishment is essential.

The question suggests itself—Will Legislators of States which have this matter under consideration now act upon policy or principle—will they forge ahead on lines acknowledge to be correct or will they continue to imitate the laws of other states because "it is easier?" Will they *settle* the problem *now* or unsettle it all over again in a few years?

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A PRIMARY ELECTION LAW FOR NON-PARTISAN SELECTION OF JUDGES, AND A NON-PARTISAN BALLOT FOR THEIR ELECTION.

We felt much interest in reading a recent pamphlet entitled: "The Successful Campaign of the Denver Bar Association to Secure Non-Partisan District Judges at the Election Held November 5, 1912."

This pamphlet contained the report of four committees, which show the plan pursued under Colorado primary and general election laws. What particularly impresses us is, that, under these laws, it hardly seems that the bar had any greatly better opening for making its movement a success than there is to bar associations in other states. And yet it succeeded.

But it took work, diligent work, with barely more than fifty per cent of the Denver bar seemingly manifesting any interest in the work, to reap the success attained. Thus there were preliminary ballotings by members of the bar to select candidates for district judges from a roll of 865 members and in only one ballot was there more than a majority casting votes, the other ballots showing less than one-third.

There is no sentiment that is seemingly more favored by lawyers and people generally, than the taking out of politics the office of judge, and yet rare, if any, is the notice of it given by legislation. To us it seems that primary election legislation offers better opportunity for the expression and enforcement of this nearly universal sentiment, than ever before has existed.

A primary election law is merely the successor of the convention system of nomination for a place on a partisan ballot. The law recognizes parties, party emblems, and party ballots, as evolutions in the efforts of the people to obtain, if not a majority, at least a plurality based on a representative number, of the voters.

It and the convention system merely stand in the way of a free-for-all casting of "hats in the ring" at a general election. In such the weakest candidate before the people might, by money or manipulation, secure an election by multiplying opponents. Of course, this also might be accomplished by preceding selection at a primary or in convention, but it is not an end of the matter. Then comes selection by the people from among two, three or more candidates, accordingly as there may be partisan tickets. If the snake of trickery is not killed, it is greatly scotched.

But, if it is legal, and no one doubts that it is, to bar from partisan tickets the name of one for office who has not been chosen by partisan measures, why is it not legal to say that names for certain offices shall not appear on a party ticket at all? Here is the kernel in the nut for a non-partisan judiciary. These party tickets are for the good of the people. They exist by sufferance or they are utilized as a means whereby the public selects its servants. If they are generally adapted for the purpose, they should be retained. If their adaptability has a limitation and use beyond that results in abuse, the law should define its limits. This is just as evident as that party tickets should have any recognition at all.

Assuming, then, that it is generally useful in the selection of candidates for public office to be voted for at a general election, that party selection shall constitute eligibility, and further that this method works to the detriment of the people in the qualifying of candidates for election to the office of judge, there remains merely the question whether there may be found a practicable means of avoiding this evil.

It seems to us just as easy for an unlimited privilege to exist for candidacy on a non-partisan as on a partisan ticket. It is not only as easy, but it is less subject to fraudulent voting than that for partisan candidacy. Thus, for example, no voter's right to vote could be challenged for pretended affiliation with a party, but every registered voter could cast his vote in a

non-partisan primary. Therefore we could have a non-partisan primary election for judicial officers.

But it may be said, that, if no more names for judges are selected at a primary than there are judges to be voted for at the general election, this substitutes the primary, for the general, election. This is true and this is precisely what happens, when a nomination becomes, because of a party label, equivalent to election. In such a case a primary really effects nothing at all, and the whole law is abortive.

Take it, however, that generally a primary election law in selecting only as many candidates for an office as may go upon each party ballot is useful, should this rule govern when for candidates for judicial office there is to be but one ticket upon which the names of all the candidates shall appear, and nowhere else?

As we have said primary election laws are designed merely to reduce the number of names to be voted for, also presuming that different parties select different candidates. Therefore there remains a further choice by voters after primaries are held.

If there is only one ticket upon which judges are to be finally voted for, why not make it contain twice or three times as many names as there are offices to be filled, unless for each office, at the primary, there has been an unanimous selection or all other parties voted for shall decline to be candidates at the general election? This is the skeleton of a measure we suggest, to attain what everybody seems to favor. At a judicial primary each voter could vote for twice as many persons as there are judicial offices to be filled, and two names for each office to be filled could appear on the ballot to be voted at the general election. The voter then could vote for one-half of the names on the non-partisan or judicial ballot, scratching the others.

Some partisan, and more probably he would be connected with a party whose nomination amounts to an election, may suggest there is infinite trouble about this scheme, but he will not declare it may not produce good results. Nor would he deny, perhaps, that the very fact that his party is such tends the more to create a bench of political adherents. The evil of partisan judicial nominations is not so bad where parties are about equally divided.

To lawyers this plan ought to be very acceptable indeed. The public mind being imbued with the idea that candidates for judicial offices are not to be regarded from a political standpoint, naturally would canvass their professional qualifications. To satisfy themselves on this score, obviously they would rely on lawyers in large measure for information. This being the situation, lawyers would become a very potent influence in the naming of candidates for judicial office, and, eventually, in their election.

With the habit of mind in the people to consider a candidate's merits, purely and solely, the standard of the judiciary would be raised. The honor of the bar, its professional pride, its standing before the people would be involved in the issue of a competent or incompetent bench. Why should not a bar selection under such circumstances carry ten times the force it now has? But a great benefit would be, that the people would begin to feel that no political boss has any strings on the courts.

N. C. C.

NOTES OF IMPORTANT DECISIONS

MARRIAGE—ANNULMENT NOT ABSOLUTE BAR TO PROVISION FOR SUPPORT OF SUPPOSED WIFE.—The record in Huffman v. Huffman, 99 N. E. 769, decided by Indiana Appellate Court, shows that a wife was guardian of her supposed husband, a person of unsound mind, they having lived together as husband and wife nearly 30 years, when he was committed to an asylum for the insane. Some two years after her guardianship she filed suit to have the marriage annulled on the ground that at the time it was solemnized

he was of unsound mind. Decree was entered —annulling the marriage.

During the course of the guardianship there were allowances made out of the husband's estate for the wife's support and these were objected to upon her settlement as guardian.

It was said in the opinion: "The court had power, upon the theory that a wife's right to support by her husband or from his estate depends primarily upon the existence of the marriage relation, to open up the whole matter of allowances and orders previously made if any sufficient reason in law or equity was shown to justify such action. * * * While appellee is not now in a position to claim a credit for support in the technical and legal sense of that term, we think it was not beyond the power of the court to allow her credit for the money so obtained and used by her, while she was nominally the wife of her ward and recognized the marital relation. It has been held in other jurisdictions that upon the annulment of a marriage void ab initio, where the supposed wife was free from fault, the court may award her a sum in gross, as compensation in the nature of damages or decree an equitable division of the property, though powerless to award alimony in the strict and technical meaning of that term." For this are cited: Strode v. Strode, 66 Ky. 227, 96 Am. Dec. 211; Werner v. Werner, 59 Kan. 399, 53 Pac. 127, 41 L. R. A. 349, 68 Am. St. Rep. 372, and notes; Barber v. Barber, 74 Iowa 301, 37 N. W. 381.

The court then distinguishes between a claim depending on the marital relation and money used by a supposed wife with approval of the court, saying the latter "has a basis in equity where the woman acted in good faith and is free from fault of which the law takes cognizance."

This distinction does not exactly satisfy cases, where the holding is, as has been stated, "in other jurisdictions," for that covers future as well as past allowance, and we think it a better rule than was held, as necessary, in the case we are noticing. There really is no more than a shadowy distinction between Indiana and "other jurisdictions." If there is equity for one rule, there is equity for both. Judges might differ as to what is acting in good faith. One might think the suit for annulment should not be delayed after knowledge of the nullifying cause, and another might believe delay justifiable. If the cause were blood relationship, it would seem this would demand prompt action. If based on original incapacity, this might be different—indeed we would not say that delay might not work estoppel against annulment. Circumstances, however, might excuse delay, as morality might not be thereby offended.

LEGAL NEWS FROM EUROPE—31ST ANNUAL MEETING OF THE GERMAN BAR ASSOCIATION.

The 31st German Bar Association Meeting (Juristentag) was held at Vienna, September 4-6, 1912. These meetings cover, not only Germany proper, but also the Cisleithanian part of Austria-Hungary.

The first of these meetings was held in Berlin in 1860, the second at Vienna in 1862.

Now, after 50 years, the meeting place was Vienna once more, and there was this remarkable circumstance connected therewith that both of these meetings were held under the "protection" of the same sovereign, emperor Francis Joseph.

Die Deutsche Juristen Zeitung, published in Berlin by Dr. Otto Liebman, and of which Hermann Staub said at the 1902 meeting, that it constitutes "a perennial Bar Association Meeting," has published a very interesting "Festnummer" for the 1912 meeting. Among other things it contains a signed photograph of the emperor, dedicated to the meeting, showing him to be an erect and vigorous man, his eighty years and more notwithstanding; also pictures of the famous Dr. Joseph Unger and of "Do things" Franz Klein, the Austrian Minister of Justice and father of the new Austrian Code of Civil Procedure. The latter, by the way, appears to look very much like Senator Root.

Then it contains fifteen original articles by the coryphees of German-Austrian jurisprudence, among them (besides Unger and Klein) von Schwind, Hans Sperl, Adolf Bachrach and Edmund Benedikt, most of them discussing the development of German and Austrian law during the last fifty years and their mutual influence on each other, others taking for their subjects questions now demanding solution in both countries, and others again trying to forecast the future.

Then come the fourteen questions on the program of the meeting, with short statements by the introducers thereof, among whom may be found Dr. Neukamp, Professor Julius Landesberger and Dr. Hans Grosz.

Finally, the ordinary contents of the semi monthly issues of the "Zeitung."

Most of the articles and questions for debate and resolution, have naturally but an indirect interest for outsiders, but one of the questions on the program, No. 4, introduced by Judge Guthe of Berlin, would seem to be of universal practical interest.

This refers to the possibility that the personal obligation connected with a mortgage loan may be enforced against a mortgagor many years after he has parted with the mortgaged property (subject to the mortgage) and perhaps after the property has passed through a number of hands.

As foundations for his proposals, Judge Guthe calls attention to two facts, viz.. That the purchaser, subject to a mortgage, has received value for the amount of the mortgage, to-wit: the corresponding abatement in the purchase money; and that in making a mortgage loan, the financial status of the mortgagor practically plays no part.

Judge Guthe's proposals are, to amend the law, first so that the mere fact that the purchaser has assumed the mortgage shall make him personally responsible for its amount. This, however, would not release the original mortgagor, as it would not be binding on the mortgagee. The judge, therefore, proposes as a second amendment, that unless the mortgagee, in the original mortgage, makes it one of the conditions of the bond, that he reserves to himself the option whether he will accept the new owner as his debtor in place of the original mortgagor, the assumption of the mortgage by the purchaser shall, ipso facto, release the original debtor.

In connection with these proposals it may be said that in various continental countries, this difficulty has been practically solved by one of the conditions usually inserted in a mortgage (the mortgage consisting of one paper only, containing both the obligation and the giving of security). It is the universal custom to stipulate that the whole mortgage money, principal and interest, shall become due on change of ownership, and this is such a uniform custom that where it is intended that a mortgage shall run for a fixed period without regard to changes of owner, this is expressly stated in the mortgage ("from owner to owner"). This has the effect, that the mortgagee is always consulted before a sale, the old obligor is released and the new owner is accepted in his place.

AXEL TEISEN.

Philadelphia, Pa.

SOME PRACTICAL OBSERVATIONS ON REFORMING THE ADMINISTRATION OF JUSTICE.*

It is fundamental under our form of government that the standard of justice and judicial administration should be the same for rich and poor. There is no justification for an inferior standard of justice for litigants whose financial interests involved are small. This class of litigants are entitled to the highest standard of judicial service which the government can provide because they are more effected by injustice than those of larger interests. There is one other consideration that ought not be overlooked, which is this: Courts have two objects to attain. One is to administer justice in the particular controversy; the other, is to administer the law so that there will be a general confidence in its justness. These two purposes probably never have been and never will be entirely conserved in inferior courts. The badge of inferiority cannot be overcome however high may be the character and learning of the judge.

It is the verdict of all communities which have tried the experiment, that inferior courts become political machines. That character at once destroys their efficiency as tribunals for the administration of justice; and a greater power for evil than a political machine, centering about a court, is hardly conceivable. Again, judgeships of such courts have a peculiar attraction for the inferior lawyer, while on the other hand, men of the highest character and learning, because of the inferiority of the court, as a rule, do not seek its judicial honors.

*Mr. W. L. Sturdevant of St. Louis, Mo., author of this article is chairman of the local bar association committee on reforming procedure. This committee made a most thorough investigation of this very live question and proposed some very interesting changes which are now receiving the consideration of the bar. At our suggestion Mr. Sturdevant prepares a general summary of these suggestions which we are of opinion will be found helpful and interesting to those thinking along these lines.

A. H. R., Editor.

Too Many Jurisdictions.—I think it can be safely asserted that one of the chief causes of the law's delay and the general complaints against the technicality and confusion in the administration of the law is the confusion resulting from numerous jurisdictions each with its separate rules of procedure. This necessarily results in a great waste in the way of delays, duplications of work and expense and a general lack of that unity and system that should prevail in such matters and no good reason exists for continuing this condition when all the purposes of the courts can be accomplished more directly, with less expense and with more general satisfaction in one common tribunal. The recent Act of Congress abolishing the Circuit Court of the United States and conferring its jurisdiction on the District Court recognizes the merits of this policy.

The ideal judicial system in one in which there is one jurisdiction only for the trial of causes and one jurisdiction only on appeal. Such a system affords the greatest opportunity for simple, direct and uniform procedure, harmonious adjudication and, therefore, a speedy administration of justice.

The improvements suggested above can all be accomplished without any revolutionary or radical changes in the present order of things. It can be done by the process of elimination and without any new jurisdictions or any new codes of procedure under which a half century of adjudication and interpretation would be required to settle the practice. The present code of procedure governing the practice in the Circuit Court or at least most of its provisions have been under judicial fire for more than half a century, but has now become fairly well settled. It is ample for all litigated matters and can from time to time be adapted to existing conditions (as now proposed) without disturbing settled principles.

As to Costs.—Our present system of costs is indefensible. It works great hardship on the litigant of small means. In a suit involving the smallest amount, the same security and the same amount as cash deposit is required as in a case involving many thousands of dollars. A system under which the requirement for costs is so arranged that it cannot be met by large numbers of people is the same in result as a law affirmatively denying them the privilege of the courts and such a system is therefore unjust and un-American.

The policy requiring litigants to pay the expense of administering the law may be good if so applied as not to defeat the purpose for which the courts are created. The legislative and executive departments of the government are maintained largely at public expense and as a co-ordinate branch of the government, the courts might, on sound reason, be maintained in the same way. They might at least be maintained without imposing a penalty upon those whose legal rights have been violated; but under our present system such persons are compelled to bear the expense of litigation to redress their grievances where the offending party is not responsible. This is unjust in the extreme. If the prevailing party is to be liable for costs at all in litigated matters such liability should be limited to the amount made on his behalf, and the scale of costs should be so graduated that no person would be deprived of the opportunity of the courts; and all costs should be levied on a graduated scale in accord with the amount involved.

As to Pleading.—Slight changes have been proposed in certain rules of procedure which ought very greatly to shorten the time in which the merits of the controversy would be reached. Procedure is at most but a means to an end. It ought not be so cumbersome and laborious and expensive as to defeat the purpose of litigation. Fixed rules are, as a matter of course, essential to orderly method without which justice could not be administered; but these rules should be made as simple, brief and direct as consistent with their object. The parties to any controversy should be compelled under the rules to candidly state their position and since the plaintiff is re-

quired to state specifically the grounds of liability asserted, equal candor should be required of the defendant. The filing of a general denial is not a compliance with such a requirement and ought not be allowed. Every statement of substance in the plaintiff's pleading ought to be specifically responded to. Such a rule is in the interest of speedily reaching and disposing of the issues. Under the present rule a party by general denial may burden his antagonist with the labor of producing the evidence to prove many things which in the trial the defendant does not pretend to deny. It is no hardship on the defendant to be required to specifically admit, specifically deny or specifically avoid the grounds of liability alleged and a denial of the substantive facts from which liability is implied should be under oath. The rules of our Federal Courts of Equity have always required specific answers. It is also required by the codes of many of the states. Such rules deny the right of a party to plague his antagonist with unnecessary burdens and to lie in wait with a concealed hand, with an indefinite defense which the opposing party thus kept in the dark may not be prepared to meet; and such rules are sound from the standpoint of public interest as well as from the standpoint of properly protecting the particular litigant. The form of answer suggested above will remove the present defects of our procedure in that respect and otherwise facilitate the speedy dispatch of business by the courts.

It has also been suggested that the general demurrer shall specifically point out the objection raised. And this is in the interest of fair controversy and will enable the opposite party to prepare to meet the objections aimed at by the demurrer and is therefore in the interest of a speedy disposition of the controversy. After the plaintiff has assumed the burden and expense of instituting suit, the defendant should be required without delay to candidly and fully represent to the court and the opposite party his real position in the controversy. No sound reason exists for a contrary rule.

The old procedure by a bill of discovery, after the disability of parties to the litigation as witnesses was removed, became practically obsolete, and the custom of filing interrogatories with the bill and requiring the defendant to answer for the same reason was seldom resorted to. But the Supreme Court of the United States, recognizing the great expense and delay in taking the testimony of the parties and recognizing at the same time the great advantage and economy of having the position of the parties fully known, has, in its late revision of the rules of the courts of equity, adopted a rule by which either party may file interrogatories which the other is required to answer. This rule is in recognition of the evil resulting from procedure which permits either party to practice concealment and unnecessarily harass his opponent.

As to Evidence.—Our present rules of evidence are in certain respects archaic, illogical and not at all adapted to modern conditions of business out of which practically all litigation arises. I have personally never talked to a lawyer or judge on the subject who did not admit the fact. For example, we have the common law rule of evidence as to the proof of an account. The rule was established and grew out of conditions at a time when all mercantile business was conducted on a very small scale—at a time when the management, selling, delivery, charging and collecting was all done by one and the same person—the "storekeeper," and the rule established was, therefore, adapted to the situation; but under the modern development and methods of business, the rule is practically impossible. In the ordinary mercantile establishment where goods are sold at wholesale or retail, every transaction passes through many hands and necessarily so. It would in many instances require the testimony of a large number of witnesses, to prove up and connect all the necessary steps to fix liability for goods sold

and delivered and in many instances it could not be done at all under the technical rule in this state. Most of the states have long since adopted laws making a duly itemized and verified account *prima facie* evidence of liability, etc. Such a rule is entirely just, because a defendant can always conveniently make a defense if any exists, and such rule is in the interest of a less expensive and more speedy dispatch of the controversy. Again, why should the record be encumbered and delays incurred in the proof of matters known to exist by all concerned, for instance, in the proof of matters of public record. If such facts do not exist, a defendant can easily disprove the allegation which, of course, he would only have to do very rarely; and again, why should the official signatures of public officers be proven. The allegation should be sufficient unless disproved. The allegation of the signature of any person, to any contract or writing involved in the litigation and properly pleaded should also be *prima facie* true.

By thus shifting the burden of proof in this class of matters, the work of the court can be immeasurably facilitated. It would probably be a conservative estimate to say that one-fourth of the time of every division of our circuit court is consumed in tediously taking testimony in proof of facts which all know are true and which ought to be settled in the pleadings of the parties, and this saving of time would greatly relieve the present crowded dockets, and it is but a truism to say that the delay of justice is a denial of justice; and this is especially true with the litigant of small means, for in his case a delayed suit may materially interfere with his livelihood.

It can be conservatively estimated that in ninety per cent of the suits instituted there is some character or amount of liability and in suits on liquidated claims there is a greater per cent of liability. This being true according to common experience, it is an absurdity to presume in civil litigation that there is no liability and to frame the procedure upon such erroneous theory. Entirely too much opportunity is given both parties to hinder and obstruct the progress of the proceedings.

Too Many Terms.—It must be apparent to all that the numerous terms of the circuit court of St. Louis and the practice of bringing suits and conducting litigation with reference to the beginning and closing of terms is an outgrown, entirely useless and expensive system. It entails upon the clerk of the court, the courts themselves, attorneys and litigants a vast amount of useless work and all this without a single advantage in any way. Under the present rule of bringing suits with reference to the beginning of terms, if a suit is commenced as late as May 20 or 25, the defendant does not have to appear or file a pleading until the Wednesday following the first Monday in October, a period of about five months. And in many other instances the defendant has practically sixty days in which to appear and plead. The work of the court can, therefore, be greatly facilitated by having but two terms and having all process, etc., made returnable within a given time and all acts done within a fixed number of days, all without reference to terms of court.

A suggestion is also ventured as to a provision for a presiding judge with specified duties and with reference to giving the court sufficient authority, if it does not already possess it, to supervise the setting and arranging of the docket. No cases should be docketed for trial until ready for trial and they should then be docketed with some reference to the class or nature of the controversy. There is, perhaps, no legal department of any large corporation or municipality where the work is not classified and handled with some reference to its nature. Matters involving common question of law are classified with reference to that fact and handled and disposed of together as a matter of economy of time and labor. A system of this kind avoids a duplication of labor which is incurred when numerous courts are dealing with the

same legal questions. The great economy of classification is recognized in all lines of business and in all large offices and legal departments. It is difficult to see why the same classification would not be equally as advantageous in the work of the courts. Statutory proceedings under a given statute, e. g., attachments, garnishments, etc., always present common questions of law. Why should two, three, four, or more divisions of a court all be giving their time to these questions when their considerations by one judge would be sufficient for the disposition of all cases of like character in any given assignment of cases? Such a policy would not be tolerated in any well-regulated business and it is not practiced in any well-regulated law office or legal department where there is more work than can be handled by a single person. The fact is as generally recognized, that while the volume of litigation has increased at a very rapid rate during the last few decades, and the conditions of business entirely changed, the method of administering the law has remained stationary, or practically so; and I venture to assert that, with proper readjustment of methods and a proper adaptation of the procedure to present conditions, the Circuit Court of St. Louis as now constituted or the *nisi prius* courts of any other city similarly constituted, without increase of judges, is adequate to the disposition of all the litigated matters in such city, and that under such system the business of the court can be so moved along that a suit can be disposed of on the merits within thirty days from the date of filing. These changes can all be made by a few new sections of statute and a few amendments of existing statutes and without any disturbance of settled rules of procedure and without the abandonment of a single principle or method worth preserving.

There should be a change in the rule of pleading so that a suit may be filed on account, promissory note or bill of exchange where the amount does not exceed $1,000, without formal pleading. This is in the interest of economy of labor and expense and no injury can result from it. Such paper filed would, under the statute allege the liability shown on its face, and if no other liability is claimed, that would be sufficient.

I suggest also a "summary" or "short call" docket upon which, under the authority given them, the judges could have placed for trial a large class of cases which, in their nature could require but little time. The advantage of this and also the suggestion made before that no cases should be docketed for trial until ready for trial, will be apparent to every member of the bar. Under the present system cases are docketed, set down for trial, juries are brought in and parties are compelled to appear sometimes even before service is had and often before issues are joined. The waste and loss of time resulting from this condition of affairs is very great. There is hardly a day that the docket set for trial in some of the divisions and sometimes in several of them does not "go to pieces," so to speak, on the preliminary call. That is, it will be found that there is not a single case ready for trial, yet counsel in all cases and the parties in some cases are required to be present and at all times the jury is present with its fixed expense. The time thus lost by the courts, if utilized, would enable them to dispose of much of the long-delayed pending matter. It is to relieve this that a suggestion was made that the court exercise more power over the setting of the docket in the first instance and the resetting and transferring of causes from division to division, etc.

The method of the general plan is to

Eliminate all useless jurisdictions and officials;

Eliminate all rules of procedure which augment the labor of litigant and court and delay justice;

Eliminate antiquated rules of evidence;

Eliminate the duplications of work of the judges;

Make the procedure a direct, short means to the end of administering justice;

Shorten the trial by compelling candor in pleading and by modernizing the rules of evidence;

Classify the work on the basis of saving labor.

Unify the system.

W. L. STURDEVANT.

St. Louis, Mo.

INSURANCE—WAIVER.

HATCHER v. SOVEREIGN FIRE ASSUR. CO. OF CANADA.

Supreme Court of Washington, November 15, 1912.

127 Pac. 588.

A waiver of a provision of a fire policy, requiring proof of loss to be furnished within 60 days after the loss, is effectual, though the conduct constituting such waiver occurs after the 60 days provided in the policy.

MORRIS, J.: It will not be necessary to state the facts, except in so far as they bear upon the questions of law submitted by the appeal. The policy provided that proofs of loss should be furnished within 60 days after the loss occurred. It is admitted, while there was some attempt to comply with this requirement, that formal proofs of loss were not furnished within the 60 days, and respondent's recovery must depend upon his contention that this requirement may be and was waived after the expiration of the 60 days. As we view it, all of the errors suggested go to this one point, and they can well be discussed under one head.

(1) It must be admitted that there is some conflict of opinion upon this question. While it is uniformly held that this requirement is a valid one, and can only be defeated by a waiver, the conflict arises as to when this waiver may be made in order to bind the insurer. It will not be necessary to discuss these conflicting authorities, since the only thing of value in this opinion is to indicate which doctrine this court will follow.

(2) After due consideration, we have decided to unite with those courts which held that the waiver will be effectual, although the act or conduct of the insurer relied upon to constitute such waiver is subsequent to the time fixed by the policy within which proofs of loss must be furnished. We cannot understand why, when the insurer, with full knowledge of the terms of its policy, knowing that, under a strict construction of its terms, the insured by his failure to comply with those terms has breached the condition of his recovery, it may not waive such breach, and, when it so acts as to lead the insured to believe that he has not lost his rights under the policy, but that it is still in full force and binding upon the insurer, may not be held to as strict accountability as when the waiver takes place before the time fixed in the policy in which to furnish proofs of loss expires. Such a requirement as to time is nothing more than a condition involving forfeiture of a substantial right, and the application of the doctrine of waiver should be as effectual after the time as before. Since the only question is whether the strict observance of a contractual right will be insisted on, we can see no reason why such a strict observance may not be waived in this case as in many others that might be cited, irrespective of the time of such waiver.

(3) There could be no question in this case of the sufficiency of the evidence to establish the waiver. The question was asked of appellant's agent: "Mr. Roberts, do you want any formal proofs of loss, or is this sufficient? Will you waive the proofs of loss?" To which, it is testified, reply was made: "Certainly, we are not technical. * * * We will waive the formal proofs of loss." The following cases are among those supporting the rule we have adopted: Prentice v. Insurance Co., 77 N. Y. 483, 33 Am. Rep. 651; Equitable Life Assurance Soc. v. Winning, 58 Fed. 541, 7 C. C. A. 359; Hibernia Ins. Co. v. O'Connor, 29 Mich. 241; Rokes v. Amazon Ins. Co., 51 Md. 512, 34 Am. Rep. 323; Fink v. Lancashire Ins. Co., 60 Mo. App. 673; Dobson v. Hartford Fire Ins. Co., 86 App. Div. 115, 83 N. Y. Supp. 456; United Firemen's Ins. Co. v. Kukral, 4 O. C. D. 633; Johnson v. Dakota Fire & Marine Ins. Co., 1 N. D. 167, 45 N. W. 799; Capital City Ins. Co. v. Caldwell, 95 Ala. 77, 10 South. 355.

(4) Respondent contends that, under an agreement entered into between the parties on May 11, 1910, appellant cannot now claim the benefit of any subsequent waiver. This agreement is as follows: "It is hereby stipulated and agreed by and between C. M. Hatcher, party of the first part, and the Imperial Underwriters of Canada (the Sovereign Fire Assurance Company of Canada) and other companies

signing this agreement, party of the second part, that any action taken by said party of the second part in investigating the cause of fire or investigating and ascertaining the amount of loss and damage to the property of the party of the first part caused by fire alleged to have occurred on the 6th day of May, 1910, shall not waive or invalidate any of the conditions of the policy of the party of the second part held by the party of the first part and shall not waive or invalidate any right whatever of either of the parties to this agreement. The intention of this agreement is to preserve the rights of all parties hereto and provide for an investigation of the fire and the determination of the amount of the loss or damage in order that the party of the first part shall not be delayed unnecessarily in his business and in order that the amount of his claim may be ascertained and determined without regard to the liability of the party of the second part. Witness our hands and seals in duplicate this 11th day of May, 1910. C. M. Hatcher, J. T. Anderson, for the Imperial Underwriters of Canada, the Sovereign Assurance Company of Canada." We cannot so hold. This agreement was made for the benefit of the company, and it could, if it so desired, waive any right it had obtained thereunder. To hold otherwise is to say one cannot waive the stipulations of a contract, nor depart from a right he has once obtained. Such is not the law.

(5) Besides, this waiver is not inferred from "any action taken * * * in investigating the cause of the fire or investigating and ascertaining the amount of loss." It rests, if at all, upon the direct statement, "We will waive the formal proofs of loss," and not upon any act or circumstance which might be interpreted by the jury as indicating an intention to waive. In other words, by this agreement, the company insisted that its subsequent acts should not be subject to the interpretation of any one except itself, and that it, and it alone, should have the right to say what it would and what it would not do in insisting upon any stipulation in the policy, and, having thereafter expressly waived, it cannot now insist that this agreement makes such waiver valueless. It is also insisted that we have held in Deer Trail Consolidated Mining Co. v. Maryland Casualty Co., 36 Wash. 46, 78 Pac. 135, 67 L. R. A. 275, that there can be no waiver after the time fixed in the policy for furnishing proofs of loss has expired. We do not so read that opinion. We there held that "immediate notice" meant notice within a reasonable time, and that eight months was not a reasonable time, and that a statement made on January 21st, eight months after an accident, that "we could make out proof of the accident" on the 28th or 29th of January, to which reply was made "Very well; that will be soon enough," was insufficient to show a waiver, that it could mean nothing more than that proof on "the 28th or 29th would do as well then as at the date of the conversation, which was on January 22d," and that, if the proof of loss had been made out and submitted on January 22d, its receipt by the Casualty Company would not be held to be a waiver of its right to defend against the policy, because notice was not given within a reasonable time. The court does not there say there could be no waiver, after the time fixed, which it construes to be a reasonable time; but that the reply of the agent, "Very well; that will be soon enough," could not be held to be a waiver. The further language of the court: "It was too late on January 22d to give the notice. The respondents were then in default"—cannot be held to mean that the Casualty Company could not waive the default, but only that it did not waive it, nor extend the rights of the Mining Company beyond what they were on January 22d.

(6) There is also some contention that the pleadings only raise an issue of waiver before the expiration of the 60 days, and not subsequent thereto. The relevancy of this evidence was not questioned at the trial. It was objected to as "immaterial," meaning, as we take it, to raise the same question as is here raised, that there could be no waiver after the 60 days had expired, a question of law rather than one of pleading. We do not think that counsel, having failed to suggest any question of issue, or surprise, or unpreparedness to proceed on account of the admission of this testimony, should now be permitted to insist upon a technical reading of the complaint, not insisted upon nor called in question upon the trial. The judgment is affirmed.

NOTE.—*Waiver of Proof of Loss After Time for Furnishing Has Expired.*—There is not as much conflict about the question in the principal case as it supposes, because it is rare, indeed, that it may be presented purely upon its merits, as we think the cases hereinbelow tend to show.

This question has something of a history in Missouri decision. Thus it was held by Kansas City Court of Appeals that the waiver must be before the time for giving notice and proof of loss expires. Bolan v. Fire Assn., 58 Mo. App. 225; Cohn v. Orient Ins. Co., 62 id. 271, 275. To the reverse of this it was held by St. Louis Court of Appeals in Fink v. Ins. Co., id. 673, s. c. 66 id. 513, that: "Waiver may be made after

the lapse of the stipulated time for the delivery of proofs of loss and need not combine the elements of estoppel." The Missouri Supreme Court had opportunity to settle this discord in the lower Appeals Courts in Dezell v. Fidelity & Cas. Co., 176 Mo. 253, but seems to have industriously avoided doing so, if it does not indeed approve the position of the Kansas City Court of Appeals. It was argued vigorously by Marshall, J., Burgess, J., concurring, that the other Appeals Court took the correct view. The main opinion, Marshall and Burgess, JJ., concurring in result, discusses the cases relied on to show that waiver after expiration is valid whether there was any consideration therefor or not and finds in effect, that they did not require any such ruling to be made. The cases discussed were Crenshaw v. Ins. Co., 71 Mo. App. 42; McComas v. Ins. Co., 56 Mo. 573; Taylor v. Ins. Co., 9 How. 390; Norwich, etc., Co. v. Ins. Co, 34 Conn. 561; Thwing v. Ins. Co., 111 Mass. l. c. 110; Equitable L. Ins. Co. v. Hiett, 19 U. S. App. 173; Prentice v. Ins. Co., 77 N. Y. l. c. 489; Brink v. Fire Ins. Co., 80 N. Y. 108; Devens v. Ins. Co., 83 N. Y. 168; Armstrong v. Ins. Co., 130 N. Y. 560; Omaha Fire Ins. Co., 43 Neb. 473. The holding in the Missouri case was only that the facts shown in defendant's answer prove "that the purpose for which the notice was required has been accomplished, and as it was not stipulated that a forfeiture should result from a failure to give notice, the failure in that respect was immaterial."

In Fidelity & Cas. Co. v. Sanders, 32 Ind. App. 448, 454, 70 N. E. 167, in discussing a defect in a pleading, it was said: "The pleading should show the waiver to have become effective before the policy was forfeited, through failure to perform the conditions. These conditions could only be waived within the time when appellee should have performed them. So that, if the refusal to pay, as pleaded, could be held to constitute a waiver, it does not appear that this refusal to pay was not after the contract was forfeited, because of appellee's failure to perform the conditions." To this are cited a number of prior decisions by this same court.

Where it was claimed there was a waiver, it was said: "It is urged that the retention of the proofs of loss and failure to return them was a waiver of earlier service, and that the defendant is now estopped from claiming that they were not regularly served. We do not think this position is tenable. Silence operates as an assent and creates an estoppel where it has the effect to mislead. More v. N. Y. Bowery F. Ins. Co., 130 N. Y. 537, 29 N. E. 757. The plaintiff was in no way misled by the retention of proofs of loss. His rights were gone before he attempted to serve them. * * * The insured must have been misled by some act of the insurer, or it must after knowledge of breach have done something which could only be done by virtue of the policy or have required something of the insured that he was bound to do only under a valid policy, or have exercised a right which it only had by virtue of such policy." Perry v. Caledonian Ins. Co., 93 N. Y. Supp. 50, 103 App. Div. 113.

A prior case by this court shows that proofs were sent on after the stipulated time and retained, but this was taken along with facts occurring before the expiration as evidence for the jury on the question of waiver and not as itself showing waiver. Dobson v. Hartford Fire Ins. Co., 83 N. Y. Supp. 456, 86 App. Div. 115, affirmed 170 N. Y. 557, 71 N. E. 1130.

In Westchester F. Ins. Co. v. Coverdale, 9 Kan. App. 651, 58 Pac. 1029, it is said: "A waiver, to be operative, must take place *before* an action is brought upon the policy, and, it would seem, before the time for supplying the proofs under the policy has expired. Wood Fire Ins., § 452, p. 971; Smith v. The State Ins. Co., 64 Iowa 716, 21 N. W. 145."

In Travelers' Ins. Co. v. Nax, 142 Fed. 653, 73 C. C. A. 649, notice of death was given long after the stipulated time and the company denied generally its liability under the terms of the policy. This was claimed to amount to a waiver as to delay in giving notice, but the Third Circuit Court of Appeals, in opinion by Gray, C. J., said this did not amount to express waiver, and nothing else could "give to the insured or to the beneficiary any right" to cure the default. For this are cited Cook v. North British, etc. Co., 181 Mass. 101, 62 N. E. 1049; Gould v. Ins. Co., 134 Pa. 570, 19 Atl. 703, 19 Am. St. Rep. 717; Travelers' Ins. Co. v. Myers, 62 Ohio St. 529, 57 N. E. 458, 49 L. R. A. 760.

In Melancon v. Phoenix Ins. Co., 116 La. 324, 40 So. 718, it was held, that there was a binding waiver where a company admitted there was a total loss and requested a detailed statement as to certain things to be inserted in proofs of loss, blanks for which were inclosed in a letter containing the admission, saying it will pay when the designated proof is furnished, all of this occurring after the time for furnishing proof has expired. This holding would not necessarily cover merely an express promise to pay without anything further to be done by insured to make it effectual. In this ruling there was consideration in detriment to promisee.

In Breeden v. Aetna L. Ins. Co. (S. Dak.) 122 N. W. 348, it appeared that no proofs were sent on in the required time and that then further information was asked for. It also appeared that "notice of the accident was timely given." Under these circumstances it was said that "slight evidence of waiver should prevail." This timely notice of the accident seemed to have been the only thing that saved this case.

The cases are few where, if anything is done after the time within which proofs should have been furnished have expired, that may be claimed as a waiver, this is considered to stand alone. The conjunction of absolute failure to do anything before and express promise afterward supposably would be rare indeed. As we have seen Missouri Supreme Court held many cases pretending to support liability do not really do so. The better rule seems to be there should either be a consideration or a prejudicial misleading.

C.

ITEMS OF PROFESSIONAL INTEREST.

MEETING OF IDAHO STATE BAR ASSOCIATION.

The Idaho State Bar Association held its annual meeting in the United States courtroom, at Boise, Idaho, January 16th to 18th,

1913. The meeting was very largely attended, so our correspondent writes, and was one of the best meetings in the history of the association.

The president's address, by Frank Martin, of Boise, Idaho; paper was read by Lot L. Feltham, of Weiser, on Contempt of Court; Judge Edward A. Walters, of Shoshone; address was on Reformation in Criminal Law and Procedure and Thomas C. Coffin, of Boise, Pooling Agreements Among Stockholders; Judge Frank S. Dietrich, of Boise, explained the New Federal Equity Rules, while Mr. John M. Flynn, Coeur d' Alene delegation; Report of Committee on Judicial Administration and Remedial Procedure, of which he is chairman. Other interesting reports were submitted, which will be of great interest to Idaho lawyers. The new officers elected were: President, Judge Fremont Wood, Boise; Secretary, Benjamin S. Crow, Boise; Treasurer, Brank B. Kinyon, Boise; Members of the Executive Committee: Clency St. Clair, Idaho Falls; Karl Paine, Boise.

CORAM NON JUDICE.

THE LAWYER'S HEREAFTER.

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Sought relief from terrestrial trials in death;
When they all had enough of contentions and strife,
Then, longing for peace, they signed a release
Of the bodies whereof they'd been tenants for life;
Whereupon, it is said, without further delay,
"Communis mors omnibus" took them away.
And when they were ready, each man in his place,
With a wild ghostly cheer, they quitted this sphere,
And sailed through the star sprinkled regions of space.
Never was seen such a motley throng,
With wings so large and with robes so long;
There were judges, solicitors, barons and clerks,
Chief Justices, authors of learned law works,
Reporters, attorneys of different degrees,
Lots of Q. C's, scores of C. B's,
And a numberless host of profound LL. B's.
Onward they sped with astonishing ease,
Till the earth and the moon looked the size of two peas.
But at last they emerged from the regions of night,
And splendor celestial burst full on their sight.
The omnibus stopped at the pearl covered gate,
And all were well pleased, but I'm sorry to state
That when they alighted their hopes were all blighted
By being informed they had not been invited,
And had to go elsewhere, as sure as fate;
While right in the gateway a glittering sentry
Waived a fiery sword, to resist tortious entry.
What a commotion was caused by the news:
Bacon L. C. had a fit of the blues;
Littleton swore they had not had their dues
In being regarded like Turks or like Jews;
Clamors were heard on every hand;
Some of the band, with a good deal of sand
Claimed estates—tail in the heavenly land.
"I' faith" exclaimed Coke, "this passeth the joke;
By my halidom, somebody's neck shall be broke!"
And he drew up a writ just to make things completer,
Headed, "Doe on demise of Lord Coke v. Peter."
But when he walked up to the gate, it is said
The guardian saint, as a means of restraint,
Just broke the sword moliter over his head.
Then the janitor poked his head out of the basement,
Then the janitor poked his head out of the casement!"
And with mutterings loud, the grumbling crowd
Remounted the wagon, while everyone vowed
That so gross an injustice should not be allowed.
Then Death, on the box, with a skeleton grin,
Drove them out by the very same way they came in,
And putting the brakes on for fear of a spill,
Whipped up his lean horses and started down hill.
Straight downward they went, past the comets and stars
Past Mercury, Jupiter, Venus and Mars.
Lord Holt, with a frown, looking mournfully down,
Said to Hawkins, the author of "Pleas of the Crown,"
"Ne'er have you seen in your practice I wis,
Such a lawless descent by an heir-ship as this."
Soon as they fell, a sharp sulphurous smell
Announced their approach to the devil's hotel;
They stopped at a door which presented this sign:
"Apply at the office, please get into line."
But ere they could even get down from the stage
A devil in red with two horns on his head,
Delivered these sentiments much to their rage;
"I'm sorry to hinder your further progression,
But really I can't let you into possession;
The fact is, my friends, this hotel is too small;
What in hell do you think we could do with you all?"
They were silent and dazed, and greatly amazed,
For they'd never expected the point would be raised.
Exclusion from Heaven was certainly sad,
But this second repulse seemed a little too bad;
The devil, they said, was evading in fact
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But what should they do, and how to begin it?
It was easy to see, by reflecting a minute,
As for Heaven or Hell, they were simply not in it.
At last they resolved to get a good hold
To some part of the public celestial domain
Tho' paved not with good resolutions nor gold.
So paying the driver the sum that they owed,

They promptly set out to secure an abode.
Whereabouts they discovered it, we do not know,
But this is as certain as certain can be
They at last became seized of a close in fee
Somewhere out in the far distant sky;
And they dwell on high as the years go by,
With never a care and never a sigh,
And oft at evening time it is said,
When the lamps are lit and the board is spread,
They cheer the hours with genial mirth,
Recalling the days that they spent on earth.
Such a banquet was spread on the table of law,
As never a mortal attorney saw
Slabs of law calf instead of veal
Juicy fat cases served up on appeal
Actions of trover, remainders over
And an excellent digest to settle the meal
They drink the best wine that there is to be had
In livery of seisin the servants are clad.
The food is served up on folio plates
They sit on reports of the different courts
Especially those from the United States
Three ladies enliven the jovial scene
Whose names are right well known I ween,
Barmaids whose characters might be cleaner,
Miss Feasance, Miss Joinder and coy Miss Demeanor,
Ever they live in perpetual bliss
What happier end could destiny send
To an honest and painstaking lawyer than this
And ever since then when a lawyer dies
And his soul passes on beyond the skies
Come he from near or come he from far
He is judged by the great immortal bar
And if he is found without legal sin
They open their circle and take him in
But if he has lied or even tried
To use false means to help his side
He is cast adrift into empty space
And never shall find a resting place.

E. W. BLAKE, Jr.

BOOKS RECEIVED.

Letters to a Young Lawyer, by Arthur M. Harris, of the Seattle Bar. Price, $2.00, delivered. St. Paul, Minn.: West Publishing Co. Review will follow.

BOOK REVIEWS.

BRANTLY ON CONTRACTS, SECOND EDITION.

The first edition of this work appeared in 1893, and its author, Mr. William T. Brantly, Reporter of Maryland Court of Appeals, follows greatly the classification of his subject as shown in the works of Anthon and Pollock, believing that thus is pursued a plan whereby a steady grasp of the principles governing the law of contracts is better assured. He believes that if there is carried to the mind of the student "a clear perception of principles he can easily find recent cases involving their application."

It is a pleasure and a profit to discover a work achieving this result, rather than producing a sort of digest in which the announcement of all sorts of principles conflicting inter sese appear, merely because they are in reports. Each of these announcements ought to be known locally and if they are not sound they ought not to have any influence persuasively, when cited abroad. The author has selected cases which afford illustrations of what he deems the true rule, but as to some matters where authorities are conflicting he has written more elaborately. In such matters he states his view of the true principle and the reason therefor.

This plan of treatment is much to be commended and the manner of its being done is clear and concise.

The work in one volume, including table of cases and index, is 560 pages, bound in law buckram, and of typographical excellence, is published by M. Cudander, Law Publisher, Baltimore. 1912.

HUMOR OF THE LAW.

Lawyer—Your Honor, I ask the dismissal of my client on the ground that the warrant fails to state that he hit Bill Jones with malicious intent.

Rural Judge—This court ain't a graduate of none of your technical schools. I don't care what he hit him with. The p'int is, did he hit him? Perceed.—Minneapolis Journal.

Eighteen years ago, L. H. Cady, a dignified, calm lawyer, came from Iowa and located in Fort Smith. He had a good mind and a kind heart, and his ideals for the dignity and sanctity of courts, and the impartial balance of his mind made him good material for a judge. Through the friendship of the lawyers in his new home he was soon elected a justice of the peace. He endeavored to conduct the proceedings in his court with the dignity and decorum that would grace the Supreme Court.

One day in the trial of a case before him there appeared on opposite sides two hot-blooded, fire-eating, tempestuous attorneys, Sam Edmondson and Bill Blythe. The trial commenced.

Sam stated to the court the proposition of law upon which he grounded his suit. Bill with some display of temper announced that such was not the law, never had been, and never would be, adding "excepting learned counsel on the other side there could not be found in the whole state of Arkansas, a man with little enough brains to make such an assertion."

Sam, red-headed and quick-tempered, was instantly on the floor. Consumed with rage, and addressing the court in a loud voice he said: "Without exception there is no fool in the United States with little enough sense to declare the law as counsel on the other side has just stated it. Yea, I might truthfully say that shows him to be the biggest fool in the world." The dignified justice rapped for order and restored peace by saying: "Gentlemen, gentlemen, you forget the court, you forget the court!"

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Ever they live in perpetual bliss
What happier end could destiny send
To an honest and painstaking lawyer than this
And ever since then when a lawyer dies
And his soul passes on beyond the skies
Come he from near or come he from far
He is judged by the great immortal bar
And if he is found without legal sin
They open their circle and take him in
But if he has lied or even tried
To use false means to help his side
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And never shall find a resting place.

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BOOKS RECEIVED.

Letters to a Young Lawyer, by Arthur M. Harris, of the Seattle Bar. Price, $2.00, delivered. St. Paul, Minn.: West Publishing Co. Review will follow.

BOOK REVIEWS.

BRANTLY ON CONTRACTS, SECOND EDITION.

The first edition of this work appeared in 1893, and its author, Mr. William T. Brantly, Reporter of Maryland Court of Appeals, follows greatly the classification of his subject as shown in the works of Anthon and Pollock, believing that thus is pursued a plan whereby a steady grasp of the principles governing the law of contracts is better assured. He believes that if there is carried to the mind of the student "a clear perception of principles he can easily find recent cases involving their application."

It is a pleasure and a profit to discover a work achieving this result, rather than producing a sort of digest in which the announcement of all sorts of principles conflicting inter sese appear, merely because they are in reports. Each of these announcements ought to be known locally and if they are not sound they ought not to have any influence persuasively, when cited abroad. The author has selected cases which afford illustrations of what he deems the true rule, but as to some matters where authorities are conflicting he has written more elaborately. In such matters he states his view of the true principle and the reason therefor.

This plan of treatment is much to be commended and the manner of its being done is clear and concise.

The work in one volume, including table of cases and index, is 560 pages, bound in law buckram, and of typographical excellence, is published by M. Cudander, Law Publisher, Baltimore. 1912.

HUMOR OF THE LAW.

Lawyer—Your Honor, I ask the dismissal of my client on the ground that the warrant fails to state that he hit Bill Jones with malicious intent.

Rural Judge—This court ain't a graduate of none of your technical schools. I don't care what he hit him with. The p'int is, did he hit him? Perceed.—Minneapolis Journal.

Eighteen years ago, L. H. Cady, a dignified, calm lawyer, came from Iowa and located in Fort Smith. He had a good mind and a kind heart, and his ideals for the dignity and sanctity of courts, and the impartial balance of his mind made him good material for a judge. Through the friendship of the lawyers in his new home he was soon elected a justice of the peace. He endeavored to conduct the proceedings in his court with the dignity and decorum that would grace the Supreme Court.

One day in the trial of a case before him there appeared on opposite sides two hot-blooded, fire-eating, tempestuous attorneys, Sam Edmondson and Bill Blythe. The trial commenced.

Sam stated to the court the proposition of law upon which he grounded his suit. Bill with some display of temper announced that such was not the law, never had been, and never would be, adding "excepting learned counsel on the other side there could not be found in the whole state of Arkansas, a man with little enough brains to make such an assertion."

Sam, red-headed and quick-tempered, was instantly on the floor. Consumed with rage, and addressing the court in a loud voice he said: "Without exception there is no fool in the United States with little enough sense to declare the law as counsel on the other side has just stated it. Yea, I might truthfully say that shows him to be the biggest fool in the world." The dignified justice rapped for order and restored peace by saying: "Gentlemen, gentlemen, you forget the court, you forget the court!"

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Assignments** — Acknowledgment. — Where the assignment offered in evidence was acknowledged, but there was no certificate as to the authority of the notary, the court should permit plaintiff to supply the certificate.—Kumin v. United Waste Mfg. Co., 138 N. Y. Supp. 82.

2.——Partial.—A suit cannot be maintained on a partial assignment of a debt unless the debtor assented to the assignment.—Vetter v. Meadville, Pa., 85 Atl. 19.

3. **Attachment**—Damages.—In an action on a bond for damages for wrongful attachment, money paid for procuring an undertaking for the release of the attached property, in the absence of evidence that it was excessive, was properly allowed.—Smith v. American Bonding Co., N. C., 76 S. E. 481.

4. **Bankruptcy**—Act of.—An alleged bankrupt's payment of a bonus to secure a loan on a chattel mortgage, the proceeds of which were used to pay a prior mortgage, held not an act of bankruptcy, as a conveyance of property with intent to hinder, delay and defraud creditors.—In re Hallin, U. S. D. C., 199 Fed. 806.

5.——Concealment.—Where all of a bankrupt's acts alleged to constitute concealment of property from his trustee occurred prior to the filing of the bankruptcy petition and more than 12 months before the finding of an indictment, the prosecution was barred by Bankr. Act July 1, 1898, § 29d.—Warren v. United States, C. C. A., 199 Fed. 753.

6.——Consideration.—Deposit of the proceeds of the sale of goods by a bankrupt in a bank held a sufficient consideration for the bank's agreement to hold the same for the carrying out of a settlement agreement, on the failure of which, and intervention of bankruptcy, the bankrupt's trustee was entitled to the unsold goods, and to the deposits.—Bank of Brodhead v. Smith, C. C. A., 199 Fed. 703.

7.——Equitable Assignment.—An understanding between an attorney and his insolvent client that the attorney was to receive fees for services rendered more than four months before bankruptcy out of the proceeds of the foreclosure of a mechanic's lien held in effect an equitable assignment, available in bankruptcy proceedings.—In re Coney Island Lumber Co., U. S. D. C., 199 Fed. 803.

8.——Provable Debt.—Under Bankr. Act July 1, 1898, § 64b, and Code W. Va. 1906, c. 74, § 3103, bondholders of a corporation held not precluded from proving their debts as secured because of their omission to record the deed of trust securing the bonds.—In re Charles Town Light & Power Co., U. S. D. C., 199 Fed. 846.

9.——Proximate Cause.—A false financial statement, made 18 months before a sale of goods to the bankrupt, held not a proximate cause of the sale, so as to entitle the seller to object to the bankrupt's discharge because thereof.—In re Braverman, U. S. D. C., 199 Fed. 863.

10.——Referee.—In case of doubt, a question of fact arising in a bankruptcy proceeding must be solved in favor of the referee's finding.—In re Charles Town Light & Power Co., U. S. D. C., 199 Fed. 846.

11.——Remedies.—Under the direct provisions of Bankruptcy Act, the trustee, as to property of the bankrupt not in the custody of the bankruptcy court, is vested with the right and remedies of judgment creditors holding executions returned unsatisfied.—Crawford v. Mandell, Mich., 138 N. W. 705.

12.——Trustee.—A bankrupt's trustee, though entitled to the rights of a judgment creditor, is not a purchaser of the bankrupt's property for value.—In re Charles Town Light & Power Co., U. S. D. C., 199 Fed. 846.

13. **Banks and Banking**—Bailment.—While ordinarily the relation between banker and depositor is that of debtor and creditor, yet, if the deposit is made for a specified purpose, the bank becomes a bailee of the depositor.—Continental & Commercial Trust & Savings Bank v. Chicago Title & Trust Co., C. C. A., 199 Fed. 704.

14.——Certificate of Deposit.—Proof that a certificate of deposit was paid to another than the depositor without indorsement thereon, unexplained, establishes prima facie a case in favor of the depositor to recover of the bank.—Somers v. Germania Nat. Bank of Milwaukee, Wis., 138 N. W. 713.

15.——Trust Property.—Where a bank, with notice of the fiduciary character of funds acquired by a commissioner appointed to sell land in partition, credits them to the commissioner's individual account, it is liable to the beneficiaries for the diversion of the funds.—Bank of Hickory v. McPherson, Miss., 59 So. 934.

16. **Bastards**—Legitimacy.—The recognition of children by a testator in his will as born of his second wife creates a strong presumption of their legitimacy, and his declarations that

they were recognized in acts of baptism before marriage must be taken as true, in the absence of contrary evidence.—Duvigneaud v. Loquet, La., 59 So. 992.

17. **Bills and Notes**—Burden of Proof.—A defendant sued as maker of a note by an indorsee pleading payment, denying indorsee's ownership, and alleging that his title to the note would be in fraud of the bankruptcy law, does not have the burden of proof.—Long v. Long, Mo., 150 S. W. 1135.

18.——Pleadings.—A complaint against an indorser, which fails to allege notice of dishonor, is demurrable.—Burwell v. Gaylord, Minn., 138 N. W. 685.

19. **Breach of Marriage Promise**—Renewal of Promise.—Where defendant's breach of marriage promise is completed, an offer by defendant to renew is no defense to an action for such breach, though it may be considered in determining the amount of damages.—Kendall v. Dunn, W. Va., 76 S. E. 454.

20. **Carriers of Goods**—Bill of Lading.—A clause in a bill of lading fixing the value of the goods shipped will not relieve the carrier from liability for the full value of the goods, if they are destroyed by its negligence.—J. M. Pace Mule Co. v. Seaboard Air Line Ry. Co., N. C., 76 S. E. 513.

21.——Burden of Proof.—A bill of lading describing the property as "in apparent good order, except as noted, condition of packages unknown," would not relieve the shipper from showing the condition of goods when delivered to the initial carrier, in an action against the delivering carrier.—Alabama & V. Ry. Co. v. Cassell Drug Co., Miss., 59 So. 932.

22.——Limiting Liability.—A common carrier may by special notice to the owner of goods, or by contract, restrict his liability as an insurer, but cannot limit his liability for his own negligence.—Kime v. Southern Ry. Co., N. C., 76 S. E. 509.

23.——Reasonable Time.—In determining what is a reasonable time for transportation and delivery of freight under ordinary conditions, under a contract fixing no time, extraordinary conditions, not known to the shipper at the time of shipment, cannot enlarge the time.—Texas & P. Ry. Co. v. Langbehn, Tex., 150 S. W. 1188.

24. **Carriers of Live Stock**—Burden of Proof.—Where live stock injured in transit is accompanied by the owner or his representative, the burden is on him to show the carrier's negligence; but where the owner has shown its delivery to the carrier in good condition, and its receipt at destination in an injured condition, the burden of explaining the injury is on the carrier.—McCampbell, Figg & Burnett v. Louisville & N. R. Co., Ky., 150 S. W. 987.

25. **Carriers of Passengers**—Special Contract.—A passenger was not bound by a special contract contained in his ticket, where such ticket was retained by the carrier's agent in charge of the train and not delivered to the passenger; he being entitled to assume that no limitations on the carrier's common-law liability were intended.—Burnes v. Chicago, R. I. & P. Ry. Co., Mo., 150 S. W. 1100.

26.——Wife's Baggage.—A husband paying for transportation of himself and wife held entitled to recover for loss of baggage, consisting principally of the wife's wearing apparel.—Burnes v. Chicago, R. I. & P. Ry. Co., Mo., 150 S. W. 1100.

27. **Contempt**—Defined.—A criminal contempt is an act committed against the court as an agency of government, and may consist in speaking or writing contemptuously of the court or judges acting in their judicial capacity, and need not relate to a pending case.—In re Fite, Ga., 76 S. E. 397.

28. **Contracts**—Consideration.—The rule that inadequacy of consideration will not vitiate a contract applies only to cases where the exchange is for something of indeterminate value, and not to a mere exchange of sums of money.—Hall v. Allfree, Ind., 99 N. E. 813.

29.——Construction.—A contract must be construed so as to include all matters which the law implies as a part of it, except where its express terms were intended to control and supersede those which would arise by implication.—Fairchild v. City & County Contract Co., 138 N. Y. Supp. 133.

30.——Construction.—A telegraphic offer of employment, which does not contain all the terms of the offer, must be considered as though express reference to the substance of the negotiations had been incorporated.—O'Donnell v. Daily News Co. of Minneapolis, Minn., 138 N. W. 677.

31.——Illegality.—No action to recover damages for the breach of an illegal contract may be maintained, for such action is, in effect, an attempt to enforce such illegal contract.—Bergin v. Missouri, K. & T. Ry. Co., Tex., 150 S. W. 1184.

32.——Option.—A second option contract between the same parties, as to the same subject-matter, entered into before the expiration of the first, changing the terms of payment only, abrogates the first option.—Runnion v. Morrison, W. Va., 76 S. E. 457.

33.——Place of Performance.—Where a contract of sale was to be partly performed in New York and partly in Illinois where the goods were delivered, the law of the state where the contract was made governs as to its validity, nature, and interpretation if not contrary to the public policy of Illinois, where the contract is sought to be enforced.—Nonotuck Silk Co. v. Adams Express Co., Ill., 99 N. E. 893.

34. **Corporations**—Dummy.—Stockholder in an insolvent corporation with actual or constructive knowledge of its insolvency cannot sell his shares to a dummy purchaser to escape liability.—Banta v. Hubbell, Mo., 150 S W. 1089.

35.——Foreign Corporations.—A foreign corporation's contract of sale is not invalidated, nor its right to recover the price lost, by its failure to file papers, as required by Revisal 1905, § 1194, before being permitted to do business in the state; the statute merely imposing a penalty for such failure.—G. Ober & Sons Co. v. Katzenstein, N. C., 76 S. E. 476.

36.——Fraud.—A corporation will be regarded as a legal entity distinct frou its stockholders, only so long as it is not used to defeat public convenience, justify wrong, protect fraud, or defend crime, in which case it will be regarded as an association of persons.—Smith v. Moore, C. C. A., 199 Fed. 689.

37.——Stockholders.—Where the profits of a corporation were divided and paid to the controlling stockholder, he was liable to an accounting for such portion thereof as was paid on stock fraudulently purchased by him, though such distribution was not formally declared as dividends.—Smith v. Moore, C. C. A., 199 Fed. 689.

38. **Courts**—Federal and State.—While decisions of the United States Supreme Court are of great persuasive value in the state courts, the highest state court should follow its own decisions, when those decisions, on a matter

over which the state court has final jurisdiction, conflict with those of the federal court.—Rothschild & Co. v. Steger & Sons Piano Co., Ill., 99 N. E. 920.

39.——Following Decisions.—The United States Supreme Court follows the decisions of the state courts in determining whether an interstate carrier may relieve itself from liability for negligence by a valuation clause if the case originated in the state courts.—J. M. Pace Mule Co. v. Seaboard Air Line Ry. Co., N. C., 76 S. E. 513.

40. **Covenants**—Attorney Fees.—Attorney's fees are not recoverable as an item of damages for breach of warranty of title in the absence of an express stipulation to pay them.—Adams v. Cox, Tex., 150 S. W. 1195.

41.——Eviction.—Foreclosure of purchase-money mortgage will not be denied because the mortgagee had not had a good title, where there had been no eviction, and it did not appear that there was any person who could evict or accept a surrender.—Peabody v. Kent, 138 N. Y. Supp. 32.

42. **Criminal Law**—Confession.—The confession of accused and corroborating circumstances may together establish the corpus delicti.—State v. Skibiski, Mo., 150 S. W. 1038.

43.——Former Acquittal.—The direction of an acquittal by the court, however erroneously, bars a subsequent prosecution on the same charge.—People v. Goldfarb, 138 N. Y. Supp. 62.

44.——Irresistible Impulse.—The "irresistible impulse" doctrine does not obtain, though the defense be kleptomania.—State v. Riddle, Mo., 150 S. W. 1044.

45. **Curtesy**—Decedent's Debts.—The right of a husband in one-third of his wife's realty, of which they were seized in her right at the time of her death, given in lieu of curtesy, is subject to be defeated by sale for payment of debts and expenses of administration.—In re Bidgood's Estate, Vt., 85 Atl. 6.

46. **Damages**—Bond.—Where, as security for his contract to pay plaintiff each year of his life a reasonable sum for his support, defendant gives a bond, recovery on the contract is not limited to the penalty of the bond.—Rhyne v. Rhyne, N. C., 76 S. E. 469.

47.——Measure of.—Where plaintiff's automobile was injured through defendant's negligence, evidence of what the expense of hiring another automobile while plaintiff's car was being repaired would have been incompetent to determine plaintiff's loss, although money actually expended in the hire of another may be recovered.—Peters v. Streep, 138 N. Y. Supp. 146.

48. **Death**—Damages.—Though a father was not legally bound to pay the espenses of his daughter's funeral, she being of age, yet, she being still a member of his family and without an estate, he may recover as damages for her death what he paid for her funeral expenses.—Palmer v. New York Cent. & H. R. R. Co., 138 N. Y. Supp. 10.

49. **Deeds**—Delivery.—Where the grantor executed a deed and had it recorded in his lifetime with the knowledge and assent of the grantee, it was sufficient delivery even though such grantee did not have the manual possession.—Abernathie v. Rich, Ill., 99 N. E. 883.

50.——Monomania.—Where a grantor, executing a deed to his wife, is of sound mind, except as to delusions, a person seeking to set aside the deed must show a clear connection between the delusions and the making of the deed.—Moritz v. Moritz, 138 N. Y. Supp. 124.

51. **Divorce**—Cohabitation Before Marriage.—Sexual cohabitation by a husband and wife before marriage is not a ground of divorce.—Rosenberger v. Rosenberger, Ky., 150 S. W. 1023.

52.——Condonation.—Condonation of misconduct is but forgiveness on condition of subsequent right conduct, and, where the condition is broken, the rights of the injured party are restored.—Dimmitt v. Dimmitt, Mo., 150 S. W. 1107.

53. **Easements**—Grant.—An easement of a right of way can be created only by grant, express or implied, or by prescription, or by exception.—Childs v. Boston & M. R. R., Mass., 99 N. E. 957.

54.——Notice of.—A purchaser is bound to take notice of an apparent easement for a way.—Green v. Miller, N. C., 76 S. E. 505.

55.——Right of Way.—The grantor of a right of way over his lot had a right to improve his land, including such right of way, so as to make it more beneficial to himself, provided the reasonable rights of the grantee were not interfered with.—Howland v. Harder, 138 N. Y. Supp. 129.

56.——Way of Necessity.—Where land is accessible by a highway, and such access does not deprive the owners of reasonable use of their land, there is no way by necessity.—Childs v. Boston & M. R. R., Mass., 99 N. E. 957.

57. **Eminent Domain**—Non-Abutting Owners.—Awards to nonabutting owners of easements of way in part of an old road, condemned and taken for a new street, should be based on the difference between the value of the easements and the right of the owners to use the street in common with the public thereafter.—In re City of New York, 138 N. Y. Supp. 107.

58. **Equity**—Laches.—In general, laches is neglect to do what, in the law, should have been done, for an unreasonable or an unexplained length of time, under circumstances permitting diligence.—Newberry v. Wilkinson, C. C. A., 199 Fed. 673.

59.——Laches.—A right may be lost by delay, without any element of actual damage to him against whom it existed.—Somers v. Germania Nat. Bank of Milwaukee, Wis., 138 N. W. 713.

60. **Estoppel**—Silence.—Acquiescence, consisting of mere silence, may operate as an estoppel to preclude assertion of legal title and rights of property.—Loughran v. Gorman, Ill., 99 N. E. 886.

61.——Waiver.—There cannot be a waiver without intent to waive, based on knowledge of facts; but the intent and knowledge may be constructive, as well as actual, and conclusive where knowledge does or ought to exist.—Somers v. Germania Nat. Bank of Milwaukee, Wis., 138 N. W. 713.

62. **Execution**—Active Trusts.—The interest of a beneficiary under an active trust, requiring the legal title to be held by the trustee, cannot be sold under execution.—Lummus v. Davidson, N. C., 76 S. E. 474.

63.——Change of Defendant's Name.—Where the name of defendant is changed after verdict for plaintiff from that of a joint-stock company to its president, and on a second trial a verdict is again rendered for plaintiff, an execution may properly be issued against the property of the association.—Lepsch v. Barrett, Pa., 85 Atl. 21.

64. **Fraud**—Implied.—Fraud of the plaintiff in connection with the matter sued on cannot be implied from the mere fact that he sued for more than was found due.—Maine v. Constantine, Iowa, 138 N. W. 702.

65. **Frauds, Statute of**—Oral Agreement.—Mortgagee's oral agreement to purchase premises at foreclosure, resell them at private sale, and account to the mortgagor, held enforceable after such sale as to the agreement to account, being separable and not within the statute of frauds.—Zwicker v. Gardner, Mass., 99 N. E. 949.

66.——Time of Performance.—A contract for services, which shows that it is not to be performed within one year, is within the statute of frauds; but a contract for one year's services, commencing on the date of the contract is not within the statute.—O'Donnell v. Daily News Co. of Minneapolis, Minn., 138 N. W. 677.

67. **Fraudulent Conveyances**—Husband and Wife.—Real property purchased by a wife with money saved from her husband's wages, given her to support the family, held not subject to the claims of the husband's creditors.—Ford Lumber & Mfg. Co. v. Curd, Ky., 150 S. W. 991.

68. **Habeas Corpus**—Remedy.—Habeas corpus affords an efficient remedy against the action

of immigration officers, where they exceed their power or authority, although their decisions on questions of fact are final, and not reviewable.—United States v. Suekichi, C. C. A., 199 Fed. 750.

69. **Husband and Wife**—Estoppel.—Where a conveyance was executed for a married woman and her husband, by their son, and the consideration was received by the husband and a portion used by the wife, and neither she nor any one for her objected to the use or conveyance of the land by the grantees, she was estopped to deny the validity of the deed.—Johnson v. Elliott, Fla., 59 So. 944.

70.——Separate Estate.—A husband, who makes gifts of money to his wife, creates a separate estate in the wife and surrenders his rights with respect thereto during coverture.—Mitchell v. Chattanooga Savings Bank, Tenn., 150 S. W. 1141.

71. **Insurance**—Proximate Cause.—A condition in a policy exempting from liability for death caused wholly or partially from disease or bodily or mental infirmity contributes, either directly or indirectly, to the death.—Vernon v. Iowa State Traveling Men's Ass'n., Iowa, 138 N. W. 696.

72. **Intoxicating Liquors**—Licenses.—Where two licenses were issued to sell intoxicating liquors at two different places in the same county, the revocation of one license for a violation of the liquor law does not ipso facto revoke the other license, so as to render relator's sales under it illegal.—Ex parte Hewgley, Tex., 150 S. W. 1174.

73. **Judgment**—Amendment.—After adjournment of the term at which it was rendered, a judgment cannot be amended on the merits by reason of conditions subsequently transpiring.—Richards v. McHan, Ga., 76 S. E. 382.

74.——Connecting Carriers.—When a shippers' cause of action against an initial and connecting carrier sounds in tort, and both carriers have joined in the wrong, separate judgments may be entered against them, though there could be but one satisfaction.—Cote v. New England Navigation Co., Mass., 99 N. E. 972.

75.——Former Recovery.—An action by an employee for wrongful discharge must include every element of damages arising from the discharge, and one recovery is a bar to a further action.—McCargo v. Jergens, N. Y., 99 N. E. 838.

76.——Satisfaction.—Where the judgment against the payee of a note on his indorsement is assigned to the maker, it must be discharged of record.—Chicago Varnish Co. v. Hargood Realty & Const. Co., 138 N. Y. Supp. 93.

77. **Landlord and Tenant**—Mining Lease.—Where a mining lease reserved to lessor the possession of the surface for all purposes other than mining, such possession is not adverse to the lessee.—Charleston, S. C., Mining & Mfg. Co. v. American Agricultural Chemical Co., Tenn., 150 S. W. 1143.

78.——Subletting.—Where defendant agreed to exchange apartments with another tenant, but the exchange was not approved by plaintiffs, defendant remains liable for the rent of the apartment on which he had a lease, and is not entitled to credit for payments of rent by the tenant with whom he had exchanged.—Faris v. Butler, 138 N. Y. Supp. 97.

79. **Libel and Slander**—Construction.—In ascertaining the meaning of words of an article, as regards the question of libel, the entire article must be construed.—Skaggs v. Johnson, Ark., 150 S. W. 1036.

80.——Privilege.—Communications by the Grand Master of the Grand Lodge of Louisiana, advising Master Masons that in purchasing degrees from a representative of the "Cerneau Supreme Council," which the Grand Lodge had declared illegitimate, they were violating the law of their organization, are entitled to a qualified privilege.—Bayliss v. Grand Lodge of State of Louisiana, La., 59 So. 966.

81. **Limitations of Actions**—Equity.—Where fraud, forming the basis of a suit in equity, has been concealed and kept from the knowledge of complainant until limitations have run, the court will disregard the statute.—Newberry v. Wilkinson, C. C. A., 199 Fed. 673.

82. **Malicious Prosecution**—Abuse of Process.—A termination of an action held necessary to maintain an action for a malicious prosecution or attachment, but not to one for an abuse of process.—Wright v. Harris, N. C., 76 S. E. 489.

83.——Pleading.—In a count for malicious prosecution, finality of the prosecution is sufficiently charged by allegation of release of plaintiff and abandonment of the prosecution.—Galizian v. Henry, W. Va., 76 S. E. 440.

84. **Marriage**—Validity.—Where New York citizens went to another state and contracted a marriage which could not have been contracted validly in New York, and immediately returned to that state, the New York courts had jurisdiction to determine its validity according to the New York laws.—Cunningham v. Cunningham, N. Y., 99 N. E. 845.

85. **Master and Servant**—Assumption of Risk.—Where the master temporarily requires the servant to perform duties not within the scope of his employment, the servant assumes only those risks which he may ascertain by the exercise of ordinary care.—National Fire Roofing Co. v. Smith, Ind., 99 N. E. 829.

86.——Assumption of Risk.—Where a machine is unsafe, because not properly guarded, and an employee, with knowledge thereof, takes charge without objection, and is injured, he assumes the risk.—Bradford v. Bee Bldg. Co., Neb., 138 N. W. 734.

87.——Employment.—An employee proving his employment for a specified term and his discharge prior thereto establishes a prima facie case of wrongful discharge; and the employer, to escape liability, must prove a reasonable cause.—Stark Distillery Co. v. Friedman, Ky., 150 S. W. 981.

88.——Independent Contractor. — Defendant having contracted to install a refrigerating apparatus in a packing plant, made the plant its own working place to the extent necessary to install the refrigerating apparatus.—Vilter Mfg. Co. v. Quirk, C. C. A., 199 Fed. 766.

89.——Inspection.—Where a master failed to inspect an appliance furnished to his servant, which was not reasonably safe, and such omission was the proximate cause of the servant's injury, the master was liable.—Doiron v. Baker-Wakefield Cypress Co., La., 59 So. 1010.

90.——Master's Duty.—What an employer ought reasonably to know to be dangerous to his employees, he is presumed to know.—Martin v. Atlantic Transport Co., Pa., 85 Atl. 29.

91.——Proximate Cause.—The defect in a switch was not the proximate cause of injury to a street railroad motorman, where the accident would not have happened, if the car had been properly operated.—Glenn v. Metropolitan St. Ry. Co., Mo., 150 S. W. 1092.

92.——Safe Place.—A subcontractor to construct the concrete work in a building held not liable for the death of an employee, walking into an open shaft on a completed concrete floor while engaged at work thereon.—Finney v. National Fireproofing Co., 138 N. Y. Supp. 73.

93. **Mortgages**—Mechanic's Lien.—A mechanic's lien relates back to the time of the contract for the work, and takes precedence over subsequent mortgages and conveyances.—Shaughnessy v. Isenberg, Mass., 99 N. E. 975.

94. **Municipal Corporations**—Highways.—Where a collision was caused solely by defendant's act in turning suddenly towards the center of the road, plaintiff's wrongful act in remaining in the center of the highway, instead of turning to the right, did not preclude a recovery.—Hayden v. McColly, Mo., 150 S. W. 1132.

95. **Navigable Waters**—Avulsion.—Land lost by "avulsion," which is the sudden or violent action of the elements perceptible while in progress, does not cause a change of boundaries.—In re City of Buffalo, N. Y., 99 N. E. 850.

96. **Negligence**—Emergency.—One whose negligence has placed another in a perilous situation cannot escape liability for an injury resulting from the latter's effort to escape from

the danger, provided he used such prudence as an ordinarily prudent person would have used.—Warth v. County Court, W. Va., 76 S. E. 420.

97.——Negligence Imputed.—An automobile is not an intrinsically dangerous machine, and hence its owner is not liable for its negligent operation by a third person.—Towers v. Errington, 138 N. Y. Supp. 119.

98.——Intoxication.—Voluntary intoxication not amounting to a total incapacity to exercise any care, does not relieve a person from the duty to exercise the ordinary care to avoid injury required of a sober man.—Yazoo & M. V. R. Co. v. Dyer, Miss., 59 So. 937.

99.——Invitee.—A boy, hired and paid by the employees of a coal company engaged in unloading coal from vessels at a yard to carry water for them, was on the premises by the employer's implied invitation, and it must exercise reasonable care for his safety while at work.—Purtell v. Philadelphia & Reading Coal & Iron Co., Ill., 99 N. E. 899.

100.——Nuisance.—The torts of nuisance and negligence are often practically inseparable, and in many cases the same acts constituting negligence create a nuisance.—McNulty v. Ludwig & Co., 138 N. Y. Supp. 84.

101. **Partnership**—Joint and Several Liability.—A partnership is not a legal entity separate and distinct from the partners, and the promise of a firm is joint as to all the partners and several as to each, and a creditor may select any partner and collect his claim from his property.—People v. Knapp, N. Y., 99 N. E. 841.

102. **Principal and Agent**—Burden of Proof.—An agent intrusted with his principal's money to be expended for a definite purpose may be required to account in equity, and the burden is on him to show that his duties have been performed.—Holthouse v. Poling, Ind., 99 N. E. 810.

103.——Competency of Witness.—The rule that agency cannot be established by declarations of the agent does not affect competency of the agent to testify in respect to his agency.—Somers v. Germania Nat. Bank of Milwaukee, Wis., 138 N. W. 713.

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